

# MONTANA PUBLIC DEFENDER COMMISSION

Holiday Inn Downtown  
22 N. Last Chance Gulch, Helena, MT

January 29, 2015

## MINUTES

*(Approved at the March 19, 2015 Meeting)*

### Commissioners Present

Fritz Gillespie, (Chair), Helena; Chuck Petaja, Helena; Margaret Novak, Chester; Brian Gallik, Bozeman; Ann Sherwood, Pablo; Ken Olson, Great Falls; Terry Jessee, Billings

### Commissioners Absent

Bonnie Olson, Marion; Majel Russell, Billings; Roy Brown, Billings; Mike Metzger, Billings

### Staff Members Present

Bill Hooks, Chief Public Defender; Wade Zolynski, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Harry Freebourn, Administrative Director; Wendy Johnson, Contract Manager; Peter Ohman, Training Coordinator; Jenny Kaleczyc, Region 4 (Helena) Deputy Public Defender; Kaydee Snipes, Region 6 (Havre) Deputy Public Defender

### Interested Parties

Scott Crichton, Executive Director, American Civil Liberties Union of Montana (ACLU); Jim Taylor, Legal Director, ACLU

### 1. Call to Order

Chairman Fritz Gillespie called the meeting of the Public Defender Commission to order at 1:10 p.m.

### 2. Minutes of December 30, 2014 Meeting (\*Action Item)

Commissioner Gallik moved to adopt the minutes of the December 30, 2014 meeting as drafted. Commissioner Petaja seconded and the motion carried.

### 3. Commission Questions/Comments on Submitted Reports

#### A. Chief Appellate Defender Report

Chief Appellate Defender Wade Zolynski said that caseload increases have created significant delays in the criminal justice system, and are impacting victims and clients as well as the Court and the Attorney General's office.

#### B. Conflict Coordinator Report

Conflict Coordinator Kristina Neal reported that for the first half of FY 2015 there was an increase of 260 cases above the case count for the same time period last year. The largest increases in new cases are coming from Region 4 (Helena) and Region 9 (Billings). In a positive turn, the number of DN cases seems to have stabilized.

### *C. Chief Public Defender Report*

#### LEGISLATIVE UPDATE

Chief Public Defender Bill Hooks reported that several support staff gave compelling testimony at the subcommittee hearing regarding their status as working poor. Several members of the subcommittee accepted OPD's invitation to visit the Helena regional office, and the next day members attended Law and Motion. Chief Hooks believes this gave them a better understanding of what the agency does.

Chief Hooks gave an update on the status of OPD bills. HB 71 to define the term "household" for eligibility purposes was tabled in committee. SB 90 to eliminate jail time for certain misdemeanors was amended in committee; both it and the companion bill to clarify the courts' punitive authority (SB 61) have been transmitted to the House. There was a lengthy discussion regarding HB 72 to replace State Special Revenue with General Fund, which was withdrawn. HB 133 (fixed fee contracts) passed second reading in the House today. HB 218 to require OPD investigators to be licensed was withdrawn by the sponsor.

#### JUDGE SUBSTITUTION RULE

The Commission-approved policy regarding substituting judges has been implemented and seems to be working well. Chairman Gillespie received permission from the Supreme Court to make additional public comment on the proposed rule change; the judges will also be allowed to make additional comment.

#### SB 410 FUNDS

The social worker hired in Helena has been extremely valuable. Chief Hooks would like every office to have one as soon as possible. Commissioner Jessee suggested that social workers would benefit the jails as well. They had a similar program in Yellowstone County; it not only reduces the jail population, but reduces the rate of return by stabilizing the client. He is very enthusiastic about expanding the social worker role, especially in the larger regions.

The second use of 410 funds was to open the Glasgow office. The long-time Valley County attorney is very supportive of the change. Chief Hooks is confident that we are headed in the right direction.

#### OTHER ITEMS OF NOTE

There was a thorough discussion regarding the social and financial benefits of jail diversion programs.

Chief Hooks reported that the Supreme Court recently ruled that some parties are entitled to an attorney in certain kinds of voluntary adoptions. He is unsure how many new cases this might entail for OPD. He will be exploring options for handling these cases with other stakeholders.

Chief Hooks had nothing new to report regarding treatment courts, workloads in Region 4 (Helena), or the financial audit. Discussion of the ACLU Request for a Pilot Project will be deferred until later in the meeting (see item 6.A.).

*D. Contract Manager Report*

Contract Manager Wendy Johnson was available for questions on her written report, but there were none.

*E. Training Coordinator Report*

The Commission had no questions for Training Coordinator Peter Ohman regarding his written report.

*F. Financial and Operating Status*

Administrative Director Harry Freebourn reviewed the Expenditure and Funding Shortfall Estimate graphs. The agency is only requesting \$1.7 million in HB 3 (supplemental appropriations), but that is because of the \$4.5 million in SB 410 funds received. The actual agency shortfall is \$6.2 million, as detailed in the graphs.

There is nothing new to report on the 2017 biennium budget items since there hasn't been any legislative executive action yet. Mr. Freebourn noted the differences between the Commission's budget request and the budget the Governor submitted to the legislature, particularly the number of FTE (90 versus 39).

**4. Legislative Issues**

Discussed under Item 3.C.

**5. Public Comment**

ACLU Legal Director Jim Taylor said that the ACLU report on jails in Montana will be released next week. They will send a copy to OPD.

Scott Crichton, ACLU Executive Director, reported on the ACLU plan to take the film *Gideon's Army* on the road. The feedback they received on the film was that it paints a grimmer picture of public defense in the Deep South than what exists in Montana. They decided that a more productive use of the available time would be hosting discussions such as the recent one in Polson. The next stop is Billings and they are expecting a good turnout. They are trying to stimulate discussion about over incarceration, which has reached crisis proportions since mental illness and addiction were criminalized.

Republican sponsors will carry the death penalty abolition bill this session. The ACLU did a timeline on the Sidney capital cases to identify costs as part of the argument to eliminate the death penalty. They will be trying to convince the overwhelmingly Republican legislature that the current system is broken beyond repair.

## **6. Old Business/New Business**

### **A. ACLU Request for Pilot Project**

Chairman Gillespie said that OPD is not opposed to considering the ACLU's proposal if the ACLU can provide funding. He invited Mr. Taylor to present the proposal. Mr. Taylor said the first phase would be to collect additional data points, whether through spreadsheets that they have developed, or through modification of the OPD case management system. Phase two would be additional training, mentoring and supervision. Mr. Taylor believes that the original design of the statewide public defender system was good, but practice standards, policies and procedures are not being followed due to inadequate resources.

The original idea was to start with one region (Helena), but Commissioner Sherwood suggested that they start on a smaller scale with just Lake County. Based on meetings with a wide variety of stakeholders, Mr. Taylor believes there would be buy-in from law enforcement, city and county attorneys, the courts and others in the Polson area. The ACLU would like to see at least a six-month pilot in Polson, possibly expanding to the entire region after that.

There could be expanded funding opportunities by including the Tribal Defender's Office as well as OPD in a Polson-area pilot project. Mr. Taylor and Commissioner Sherwood have identified half a dozen potential grants and would be glad to work with Mr. Ohman on designing a project that would have a chance of funding.

One data point that currently isn't tracked is veteran status. Mr. Taylor said that legislators don't think of OPD clients as fellow citizens, but as "bad people." Knowing how many vets OPD serves could be a powerful tool. Chief Hooks said that veteran status is being identified in the Helena region so that the social worker can assist the client in finding appropriate services. He is interested in expanding that service as more social workers are hired.

There was a detailed discussion of the benefit of enrolling Medicaid-eligible jail inmates for services; it could not only save counties large sums in medical costs, but more importantly for defense purposes, provides eligibility for treatment programs with the inmate is released.

Chairman Gillespie asked Ms. Neal to weigh in on the ACLU proposal. Ms. Neal said that OPD already collects many of the data points in the proposal, but transferring that information into the ACLU format would not be possible given her limited resources. Both Mr. Taylor and Commissioner Sherwood have identified some potential resources to assist with data collection. There is some interest in establishing tribal public defender offices (versus contracting for defense services) and collaborating on data collection with tribal programs would expand the funding possibilities. A state/tribal partnership model would generate a lot of interest. Mr. Taylor sees no down side to pursuing the project if funding can be found.

Chairman Gillespie might ask the Commission to take action on the proposal when more information is available.

*B. Possible Interim Study*

Commissioner Novak is interested in an interim study on dependent neglect cases. Chief Hooks has been approached by a senator regarding providing counsel for certain categories of parents in DN cases. Chief Hooks responded with interest and has committed to further discussions. There is no bill draft yet, but it is not too late in the legislative process for a study bill to be introduced.

**7. Set Future Commission Meeting Dates**

The next regular meeting will be in spring, following the legislative session. If necessary, the Commission will meet by phone to take action on the ACLU proposal or any business that might arise during the session.

**8. Adjourn**

Commissioner Jessee moved to adjourn and Commissioner Ken Olson seconded. The meeting adjourned at 3:45 p.m.